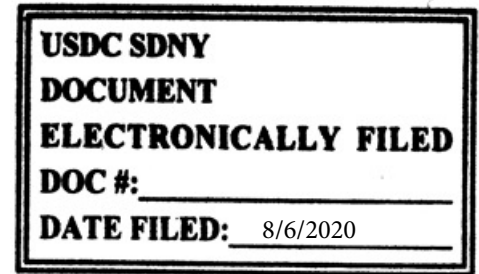


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August 5, 2020

VIA ECF

Honorable Stewart D. Aaron, U.S.M.J.
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: Rouviere v. DePuy Orthopaedics, et al.
Civil Action No. 1:18-cv-4814 (AJN)

Dear Judge Aaron,

Pursuant to the Local Rules of the Southern District of New York and this Court's procedure, below please find the Plaintiffs, Jodi Rouviere and Andre Rouviere's, Letter Motion for to Clarify or Compel 30(b)(6) Deposition of Depuy to take place on a single date or to limit the issues for the one (1) hour Portion described in the Court's Order of August 1, 2020, to those categories pertaining to the BioloX Head to which Depuy objected, specifically categories 3, 4, 6 & 9. Depuy has objected and demands that there be no inquiry regarding the BioloX Head during the seven (7) hour deposition which would be solely and exclusively limited to Depuy's Summit Stem and that Plaintiffs only be allowed one (1) hour to cover all the same issues regarding Depuy's other relevant component, the BioloX Head. Parties have met and conferred on this matter in compliance with this Court's requirements. All correspondence between parties are attached. (Exhibits A and B)

The 30(b)(6) deposition of Depuy is currently scheduled for Friday, August 7, 2020. Defendant's have requested that the deposition be split pursuant to this Court's Order dated August 1, 2020, however Depuy demands that the Plaintiffs are prohibited from addressing any issues regarding Depuy's BioloX Head during the initial seven (7) hours of deposition, which would only address Depuy's other relevant component (the Summit Stem) on 12 categories and that the postponed one (1) hour portion of deposition would be Plaintiffs only opportunity to discuss any and all issues regarding Depuy's BioloX Head including 13 categories.

With regard to the subject deposition, Plaintiffs agree to give Depuy the opportunity to prepare its witness on the several additional issues to which Depuy contested, but seek to eliminate the impossibility of completely compartmentalizing Plaintiff's inquiries regarding the Summit Stem

from the BioloX Head, as they unreasonably demand. For instance, Plaintiffs are going to be addressing “the intended, permitted or foreseeable use of the Depuy Summit Hip Stem within any other hip system, device or components, whether manufactured by Depuy or any other manufacturer...” (see category 5 of the June 3, Order and Notice of Deposition). To address the inherently interrelated Depuy components separately would, therefore, be impossible. Additionally, as Depuy previously recently represents, that the “Instructions for Use” and “Surgical Technique” produced for the Summit System now are claimed to apply to both the Summit Stem and the BioloX Head, and so separating the questioning on that and similar documents relating to both components would be difficult, if not impossible, and will waste significant time and money. Under the strict time limitations of this deposition, this would be extremely prejudicial to the Plaintiffs.

Additionally, Plaintiffs interpret that the remaining four (4) categories that Depuy did not concede in its response are the categories involving the BioloX Head that the Court intended to be covered in the supplemental one (1) hour session. To require 2 separate depositions as Defendant demands, one on each of 2 (interrelated and intertwined) components, on the same issues, recognizing that seven (7) hours is appropriate for one component but the other component would be limited to only one (1) hour for ALL the same issues does not make sense and is overly, prejudicially restrictive. Plaintiffs are not seeking two (2) seven (7) hour depositions, but one eight (8) hour deposition as allowed by the Court to efficiently and effectively conduct inquiry on both interrelated components.

Plaintiffs further advise the court that again, Depuy has dropped additional relevant late discovery, producing the 113 page 510K Summit Stem Duofix HA application to the FDA just this past Monday afternoon, August 3, 2020 at 4:40pm. These documents produced are responsive to Plaintiffs’ discovery requests served over eighteen (18) months ago. In the spirit of fairness, Plaintiffs ask the court to order the deposition to occur in one (1) 8 hour session to be arranged during the week of August 17, 2020 providing both parties ample time for complete preparation.

Plaintiffs would seek clarification and reconsideration of the order and how these issues should be addressed. Specifically to allow the full deposition to take place only after Depuy has had its opportunity to prepare its witness on the additional issues or, if absolutely necessary to split the deposition to limit the second deposition to those issues to which Depuy objected and claims the need for additional time to prepare its witness (categories 3, 4, 6 & 9) and including the 510k issues only recently revealed by Defendant’s unreasonably delayed discovery responses, and to provide enough time to fairly inquire into these issues.

Due to the urgency of this matter, Plaintiffs request that the pleading procedures on this issue be expedited.

For the reasons set forth above, Plaintiffs respectfully request this Court clarify its Order and compel the deposition to take place in a manner that allows Plaintiffs to address all issues, including the interrelation between both components, which also allows Depuy a fair opportunity to prepare its witness on those issues to which it chose to object, specifically categories 3, 4, 6 & 9. The Plaintiffs thank the Court for its consideration of this request.

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By: /s/Andre A. Rouviere
ANDRE A. ROUVIERE

CC: Counsel of Record

ENDORSEMENT: For clarification, Plaintiffs may inquire at the August 7 deposition regarding BioloX Head-related topics to the extent that such topics overlap with topics regarding the Summit Stem (*e.g.*, Court Category No. 5, ECF No. 115). Otherwise, as set forth in my prior Order (ECF No. 144), BioloX Head-related topics are to be addressed in the second deposition. SO ORDERED.

Dated: 8/6/2020

A handwritten signature in blue ink, appearing to read "Att C A", is written below the typed name.